

REMARKS

Responsive to the outstanding Office Action, applicant has carefully studied the Examiner's rejections and the comments relative thereto. Favorable reconsideration of the application is respectfully requested in light of the amendments and following detailed arguments.

In this response, claim 32 has been cancelled and claim 28 has been amended to include the subject matter of previously pending claim 32. Claim 50 was also canceled. Claim 33 was amended for clarity in regards to the amendment to claim 28, and claim 41 was amended to correct a typographical error and claim 52 was amended to depend from claim 28 instead of canceled claim 32. It is respectfully submitted that no new matter has been presented in any of these amendments.

**INDICATION OF ALLOWABLE SUBJECT MATTER**

On page 8 of the Office Action the Examiner indicated that claims 32 and 46 were objected to as depending from rejected base claims, but were allowable if rewritten in independent form including the limitations of their base claims and any intervening claims.

In response thereto, claim 28 has been amended to include the subject matter of previously pending claim 32. Therefore, it is believed that all of the claims are now in condition for allowance, and action towards that end is respectfully requested.

## IN THE SPECIFICATION

The Examiner indicated that the specification should contain a statement disclosing domestic priority that includes serial number and the date application has been abandoned. The Examiner requested applicants include such a statement.

In response thereto, the Preliminary amendment filed with the application did include a statement claiming domestic priority. Such a statement referred to the parent application by serial number but did not include a statement that the parent had been abandoned. This paragraph has therefore been amended to indicate that the parent application was abandoned.

MPEP section 201.11 III A states:

Except for benefit claims to the prior application in a continued prosecution application (CPA), benefit claims under 35 U.S.C. 120, 121, and 365(c) must identify the prior application by application number, or by international application number and international filing date, and indicate the relationship between the applications. See 37 CFR 1.78(a)(2)(i). The relationship between the applications is whether the instant application is a continuation, divisional, or continuation-in-part of the prior nonprovisional application. An example of a proper benefit claim is "this application is a continuation of prior Application No. ---, filed ---." A benefit claim that merely states that "this application claims the benefit of Application No. ---, filed ---" does not comply with 35 U.S.C. 120 and 37 CFR 1.78(a)(2)(i), since the relationship between the applications is not stated. In addition, a benefit claim that merely states that "this application is a continuing application of Application No. ---, filed ---" does not comply with 35 U.S.C. 120 and 37 CFR 1.78(a)(2)(i) since the proper relationship, which includes the type of continuing (i.e., continuation, divisional, or continuation-in-part) application, is not stated.

It is noted that this section does not require a reference to the status of the prior application (pending, abandoned, etc.) nor does it require an indication of the date of abandonment of the application. In fact, this section states that: "An example of a proper benefit claim is "this application is a continuation of prior

Application No. ---, filed---". Therefore, it is submitted that the information required in the cross-reference section has been included.

It is respectfully submitted, for the convenience of the Examiner, that in this matter, a two-month extension of time was filed in the parent application, extending the three month response time to a period of five months, so that the current application was copending with its parent. Thus, copendency between this application and its parent was properly achieved.

#### REJECTION UNDER 35 USC §102

Claims 28, 29, 31, 34-37, 18 (38?) -43, 45, 47 and 48 were rejected under 35 USC §102 as being clearly anticipated by Broyde (US 4,071,479). Claim 28 has been amended herein to include the subject matter of previously pending claim 32. therefore, it is respectfully submitted that this rejection is now moot.

#### REJECTION UNDER 35 USC §103

Claims 28-31, 34-43, 45, 47 and 48 were rejected under 35 USC §103 as being unpatentable over Broyde in view of Mendiratta (US 4,668,768). As noted above, claim 28 has been amended to include the subject matter of allowable claim 32. This rejection is therefore believed to be moot.

Based on the above, it is respectfully submitted that claim 28 is allowable over the applied art of record. Claims 29-31 and 33-52, which depend directly or indirectly from claim 28 are believed to be allowable based, at least, upon this dependence.

Therefore, all of the claims are believed to be allowable, and action towards that end is respectfully requested.

Should the Examiner wish to modify any of the language of the claims, applicants' attorney suggests a telephone interview in order to expedite the prosecution of the application.

Respectfully submitted,



Mark A. Hixon  
Registration No. 44,766

ATTORNEYS

MARSHALL & MELHORN, LLC  
Four SeaGate - 8<sup>th</sup> Floor  
Toledo, Ohio 43604  
Phone: (419) 249-7114  
Fax: (419) 249-7151  
[Hixon@marshall-melhorn.com](mailto:Hixon@marshall-melhorn.com)